

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 13, 2007

D048730 People v. Tyler

We affirm the judgment determining Tyler was mentally incompetent to stand trial, order Tyler returned to the committing court, and remand for further proceedings. McConnell, P.J.;
We Concur: McDonald, J., McIntyre, J.

D048858 Lane v. Department of Corrections et al.

The judgment of dismissal is affirmed. Each party shall bear its own costs of appeal. Huffman, Acting P.J., We Concur: Haller, J., Aaron, J.

D046853 People v. Hunter

The petition for rehearing is granted. No further briefing is required. The case is deemed submitted as of this date.

D049833 Orgil International Greenhouses Corp. et al. v. Superior Court of San Diego County/Alsa Alimentos S.P.R. de R.I. de C.V. et al.

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. Moore

D047552 People v. Loi

Cause called on merits. Patrick Morgan Ford, Esq. argued for appellant. Jeffrey J. Koch, Deputy Attorney General argued for respondent. Mr. Ford replied. Cause submitted.

D046874 Cates et al. v. Division of Gambling and Control et al.

Cause called on merits. Manuel Corrales, Jr., Esq. argued for appellant. Christine Mersten, Deputy Attorney General argued for respondent. Mr. Corrales replied. David G. Ronquillo, Esq. was present in oral argument with Mr. Corrales, but did not argue. Cause submitted.

Court recessed at 9:54 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

D049609 Paprocki v. County of San Bernardino et al.

Cause called on merits. W. Andrew Hartzell, Deputy County Counsel argued for appellant. Dabney Finch, Esq. argued for respondent. Mr. Hartzell replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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February 13, 2007 (Continued)

Court recessed at 10:21 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D047866 Schaffer v. Donner Management Company et al.

Cause called on merits. Richard W. Weinthal, Esq. argued for appellant. Ellen Nudelman, Esq. argued for respondent, Pearlman. John Wynne, Esq. argued for respondent, Greer and etc. Mr. Weinthal replied. Cause submitted.

Court recessed at 10:46 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke
Clerk: D. Moore

D049600 People v. Knox

Cause called on merits. Jennifer A. Gambale, Esq. argued for appellant. Janelle Marie Boustany, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 1:50 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

D047101 People v. Thomas

Cause called on merits. George L. Schraer, Esq. argued for appellant. Annie Featherman Fraser, Deputy Attorney General argued for respondent. Mr. Schraer replied. Cause submitted.

D048117 Eberle v. Department of Motor Vehicles

Cause called on merits. Chris A. Knudsen, Deputy Attorney General argued for respondent. James M. Bishop, Esq. was present in oral argument, and submitted on the briefs. Cause submitted.

D047187 Gahn v. Rule

Cause called on merits. Gary Gahn, argued for appellant in pro per. Jack Lieb, Esq. argued for respondent. Mr. Gahn replied. Cause submitted.

Court recessed at 2:00 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 13, 2007 (Continued)

D048963 Aquila, Inc. v. Superior Court

Matter called on merits. Sean Gorman, Esq. argued for petitioner. Nancy L. Fineman, Esq. argued for real party in interest. Mr. Gorman replied. Matter submitted.

Court recessed at 3:30 p.m. until Wednesday, February 14, 2007 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 14, 2007

D048049 In re Marriage of Mark and Yolanda B.

D047913 In re Marriage of Mark and Yolanda B.

(consolidated) Order reversed with directions. Benke, J.; We Concur: McConnell, P.J., Aaron, J.

D049606 People v. Busby

The judgment is affirmed. Nares, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

D048985 Vanessa Taylor v. M. T.

Respondent's motion to dismiss the appeal filed on January 25, 2007, has been read and considered by Presiding Justice McConnell and Associate Justices Benke and Aaron. The appeal is dismissed.

D049475 Tyler H. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

On the court's own motion rehearing is granted. No additional briefing is required. The matter is deemed resubmitted as of this date.

D049241 Nicholas M. v. Superior Court of San Diego County/City of El Cajon et al.

Let a peremptory writ of mandate issue directing the superior court to (1) vacate its July 28, 2006 order denying the *Pitchess* motion; (2) conduct a further hearing to determine what records should be produced; and (3) conduct an in camera review of records thereafter produced. This decision will become final as to this court 10 days after the date of filing. (Cal. Rules of Court, rule 8.264(b)(3).) Nares, Acting P.J.; We Concur: McDonald, J., Irion, J.

D047603 In re Cingular Cases

The request for publication of the opinion is denied.

D046669 People v. Badena

D048552 In re Badena on Habeas Corpus

(consolidated) The judgment is affirmed. The petitions are denied. Nares, Acting P.J.; We Concur: McIntyre, J., Irion, J.

D049727 Tony B. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

Petition denied. The stay request is denied. Haller, J.; We Concur: McConnell, P.J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 14, 2007 (Continued)

D050143 Alfredo L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Alfredo L. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Joan Irion
Clerk: D. Moore

D049596 People v. Meyers

Cause called on merits. William Flenniken, Esq. argued for appellant. Theodore M. Cropley, Deputy Attorney General argued for respondent. Mr. Flenniken replied. Cause submitted.

Court recessed at 9:18 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

D049597 People v. Shattuck

Cause called on merits. Mark A. Hart, Esq. argued for appellant. Nancy Ganadjian, Deputy Attorney General argued for respondent. Mr. Hart replied. Cause submitted.

D048074 Houlihan as Trustee etc. et al. v. Evans

Cause called on merits. Marc Jules Bourget, Esq. argued for appellant. Kenneth Stone, Esq. argued for respondent. Mr. Bourget replied. Cause submitted.

Court recessed at 10:02 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

D049595 Guzzetta v. City of Desert Hot Springs

Cause called on merits. Chadwick J. Bradbury, Esq. argued for appellant. Ruth E. Graf-Urasaki, Esq. argued for respondent. Mr. Bradbury replied. Cause submitted.

Court recessed at 10:29 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

February 14, 2007 (Continued)

D048333 Centro Guadalupano De Pauma Valley et al. v. Roman Catholic Bishop of San Diego, et al.

Cause called on merits. Alvin M. Gomez, Esq. argued for appellant. William V. Whelan, Esq. argued for respondent. Karen Vogel, Esq. was present in oral argument for respondent, but did not argue. Mr. Gomez replied. Cause submitted.

Court recessed at 11:00 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron

Clerk: D. Moore

D048066 Ulloa et al. v. McMillin Real Estate and Mortgage Inc., et al.

Cause called on merits. Alvin M. Gomez, Esq. argued for appellant. Dan Townson, Esq. argued for respondent. Mr. Gomez replied. Cause submitted.

Court recessed at 2:01 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke

D048190 Trepeck v. Ilitch-Trepeck

Cause called on merits. Garrett Clark Dailey, Esq. argued for respondent. Judith E. Klein, Esq. was present in oral argument for appellant, but submitted on the briefs. Cause submitted.

D047979 Henry v. Consumer Portfolio Services, Inc.

Cause called on merits. James C. Krause, Esq. argued for appellant. Melissa M. Mulkey, Esq. argued for respondent. Mr. Krause replied. Cause submitted.

Court recessed at 2:45 p.m. until Thursday, February 15, 2007 at 9:00 a.m.

D050188 Ebony S. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

There has been no response to the letter from the clerk's office, dated January 30, 2007, requesting a notice of intent signed by petitioner Ebony S. or a declaration from counsel setting forth good cause why the requirement should be waived. The matter is accordingly DISMISSED as to Ebony S.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D049729 John F. v. Superior Court of San Diego/San Diego County Health and Human Services Agency

The petition is denied. The request for a stay is denied. Nares, J.; We Concur: McConnell, P.J., Benke, J.

D047905 People v. Stevenson

The judgment affirmed. Nares, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

D045453 Ambriz v. Kelegian et al.

It is ordered that the opinion filed January 24, 2007, is modified. There is no change in judgment. The petition for rehearing is denied.

D050076 Bittner et al. v. Shaw et al.

Pursuant to California Rules of Court, rule 8.140, the appeal filed December 29, 2006, is DISMISSED for appellants' failure to timely designate the record (Cal. Rules of Court, rules 8.120(a), 8.130(a)).

D047318 Bivens v. Banner Bedding, Inc.

The judgment of dismissal and related orders are affirmed. Banner is entitled to its costs on appeal. Huffman, Acting P.J.; We Concur: Haller, J., Irion, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald.

Clerk: D. Moore

D046976 People v. Murillo

Cause called on merits. Amanda Benedict, Esq. argued for appellant. Jeremy Dwork, Certified Law Student, argued for respondent. Ms. Benedict replied. Cause submitted.

Court recessed at 9:29 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion

D046810 People v. Yogerst

D049341 In re Yogerst on Habeas Corpus

Cause called on merits. Ava R. Stralla, Esq. argued for appellant. Scott Taylor, Deputy Attorney General argued for respondent. Ms. Stralla replied. Cause submitted as to appeal only, D046810.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
February 15, 2007 (Continued)

D049205 California State Parks Foundation et al. v. Superior Court

Matter called on merits. William J. White, Esq. argued for petitioner, California State parks Foundation. Brian Hembacher, Esq. was present in oral argument for petitioner, People, but did not argue. John Flynn, Esq. argued for real party in interest. Scott Yamaguchi, Esq. was present in oral argument with Mr. Flynn, but did not argue. Mr. White replied. Cause submitted.

Court recessed at 11:00 a.m. until 1:30 p.m.

D050169 Munden et. al. v. Superior Court of San Diego County/Stuetzer et. al.

Let a peremptory writ of mandate issue directing the superior court to vacate its order requiring the production of the redacted pages of Munden's counseling records and to issue an order denying the production. The stay issued on January 24, 2007, is vacated. This opinion is made final immediately as to this court. (Cal. Rules of Court, rule 8.264(b)(3).) Defendants are entitled to costs, if any, in the writ proceeding. Haller, J.; We Concur: Benke, Acting P.J., Aaron, J.

D049680 In re Adler on Habeas Corpus

The petition is denied.

D048925 In re Juan J. Jr., et al., Juveniles

The Agency's motion to dismiss the entire appeal as moot is denied. The March 22, 2006 and June 7, 2006 findings regarding application of ICWA are reversed and the matter is remanded to the juvenile court with directions to comply with the notice provisions of ICWA. Accordingly, the June 7, 2006 dispositional orders are reversed. If, after proper inquiry and notice, no response is received from a tribe or the Bureau of Indian Affairs indicating the children are Indian children, all previous findings and orders shall be reinstated. If a tribe or the Bureau of Indian Affairs determines that the children are Indian children, or if other information is presented to the juvenile court that suggests the children are Indian children as defined by ICWA, the juvenile court must vacate its jurisdictional and subsequent orders (25 U.S.C. §§ 1912(a), 1914) and conduct new hearings in conformity with all provisions of ICWA. McIntyre, J.; We Concur: Haller, Acting P.J., Irion, J.

D049682 In re Caldwell on Habeas Corpus

The petition is denied.

D050278 Jones et al. v. Superior Court of San Diego County/AIMCO

The petition is denied.

D050178 Sprague v. Superior Court of San Diego County/Medical Board of California

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
February 15, 2007 (Continued)

D049687 In re Borbon on Habeas Corpus

The petition is denied.

D050176 Palmer v. Superior Court of San Diego County/Palmer

The petition is denied.

D049482 People v. Overton

Appellant has failed to file a brief after notice given. The appeal is dismissed.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre
Deputy Clerk: D. Moore

D048002 Flores et al. v. Evergreen Health Care Management, LLC

Cause called on merits. Melinda Owen, Esq. argued for appellant. Cause submitted.

D049588 People v. Cruz

Cause called on merits. Stephen S. Buckley, Esq. argued for appellant. Raquel M. Gonzalez, Deputy Attorney General argued for respondent. Mr. Buckley replied. Cause submitted.

Court recessed at 2:10 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

D043099 O'Meara v. Palomar Pomerado Health Systems

Cause called on merits. Robert C. Coppo, Esq. argued for appellant. Thomas Tosdal, Esq. argued for respondent. Mr. Coppo replied. Cause submitted.

Court recessed at 3:13 p.m. until Friday, February 16, 2007 at 9:00 a.m.

D049834 Metropolitan Transit System et al. v. Superior Court of San Diego County/Guzman

The petition is denied.

D049968 Darius W. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Darius W. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case as to Darius W. is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
February 16, 2007

D047840 Rusk v. Timm et al.

The judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Aaron, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and the Honorable Associate Justices Gilbert Nares and Joan Irion.

Deputy Clerk: Brandon Henson

D047380 Miramar Truck and Auto Center Inc., et al. v. General Motors Corporation et al.

Cause called on merits. Robert Otilie, Esq. argued for appellants. Gregory Oxford, Esq. argued for respondent General Motors Corporation. Ken Sobel, Esq. argued for respondents Miramar Pontiac and GMC Truck Inc., et al. Mr. Otilie replied.

Court recessed at 9:40 a.m. until 10:30 a.m.

D047828 People v. Canela

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Benke, J.

D079677 In re Chadwick on Habeas Corpus

The petition is denied.

D048795 In re Harmonie R., a Juvenile

The judgment is affirmed. McDonald, J.; We Concur: Haller, Acting P.J., Aaron, J.

Court convened at 10:30 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and the Honorable Associate Justices James McIntyre and Cynthia Aaron.

D050058 Josephson v. Josephson

Matter called on merits. Jennifer Hegemier, Esq. argued for petitioner. Suzanne Quirk, Esq. argued for respondent. Ms. Hegemier replied.

Court recessed at 11:06 a.m. until 1:30 p.m.

D048818 In re Geraldo Q., a Juvenile

The order is affirmed. Aaron, J.; We Concur: McConnell, P.J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 16, 2007 (Continued)

D048767 In re Marriage of Molina

The order is affirmed. Irion, J.; We Concur: McConnell, P.J., Haller, J.

D049889 Mission Valley Escrow, Inc. v. Jackson et al.

Pursuant to California Rules of Court, rule 8.140, the appeal filed December 27, 2006, is DISMISSED as to Ultrasigns, Inc. ONLY for failure to timely designate the record (Cal> Rules of Court, rules 8.120(a), 8.130(a)).

D050269 Scripps Health dba Scripps Memorial Hospital-LaJolla et al. v. Superior Court of San Diego County/Davalle

The petition is denied.

D048821 In re Guadalupe R. et al., Juveniles

The orders terminating reunification services and designating permanent plans of APPLA are affirmed. The case is remanded to the juvenile court with directions to enter an order concerning visitation in conformance with section 366.26, subdivision (c)(4). Arron, J.; We Concur: McConnell, P.J., Haller, J.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice and the Honorable Associate Justices Alex McDonald and Cynthia Aaron.

Deputy Clerk: Brandon Henson

D047878 People v. Soper

Cause called on merits. David McKinney, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General argued for respondent. Cause submitted.

D047868 Sycamore Ridge Apartments, LLC v. Naumann et al.

Cause called on merits. David Kay, Esq. argued for appellant. Jeffrey Miller, Esq. argued for respondents Hagen et al. Daniel Kaplan, Esq. argued for respondents LaFave et al. Mr. Kay replied. Cause submitted.

Court recessed at 2:23 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice and the Honorable Associate Justices Alex McDonald and James McIntyre.

D047717 Insurance Company of the West v. Smith et al.

Cause called on merits. Samy Henein, Esq. argued for appellant. Roland Colton, Esq. argued for respondents. Mr. Henein replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 16, 2007 (Continued)

D048032 Murty v. Arroyo

Cause called on merits. Douglas Cleary, Esq. argued for appellant. Brian Worthington, Esq. argued for respondent. Mr. Cleary replied. Cause submitted.

Court recessed at 3:15 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice and the Honorable Associate Justices Alex McDonald and James McIntyre.

D047858 Rogozienski v. Allen et al.

Cause called on merits. Frank Rogozienski argued in pro per. Donald English, Esq. argued for respondent James Allen. Steven Amundson, Esq. argued for respondent S. Love. Cause submitted.

Court recessed at 3:27 p.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice and the Honorable Associate Justices James McIntyre and Cynthia Aaron.

D046474 Styles v. Schwab et al.

D047508 Styles v. Schwab et al.

Causes called on merits. James Moneer, Esq. argued for appellant and cross-respondent. James Mitchell, Esq. argued for respondent and cross-appellant. Mr. Moneer replied. Causes submitted.